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Person To Contact:

Telephone Number:

Refer Reply To:
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PLR-136744-13
Date:
February 18, 2014

TY:

Plan =

Board =

County C =

State S =

Dear :

This responds to your authorized representative's original letter and subsequent correspondence, on behalf of County C, located in State S, requesting a ruling concerning its deferred compensation plan (the "Plan") which County C intends to be an eligible deferred compensation plan under section 457(b) of the Internal Revenue Code of 1986 (the "Code"), as amended under the Economic Growth and Tax Relief Reconciliation Act of 2001 (EGTRRA) and in subsequent legislation.

Under the Plan, a participant who is currently an employee of the Board of County C may elect to defer compensation that would have been received for services rendered to his/her employer in any taxable year until death, severance from employment, attainment of age 70 1/2, or the occurrence of an unforeseeable emergency.

The Plan permits participants to defer compensation on a pre-tax basis. In addition, the participant may elect to make deferrals into the Plan, upon severance of employment, of

accumulated sick pay, accumulated vacation pay, or from back pay as permitted by section 457 and the regulations thereunder.

The Plan provides that all elections to defer compensation and any modifications made to such elections must be made prior to the beginning of the month in which the related compensation would have been paid in the absence of a deferral election.

The Plan provides for a maximum amount that may be deferred by a participant in any taxable year. It also provides for a catch-up computation for amounts deferred for one or more of the participant's last three taxable years ending before he or she attains normal retirement age under the Plan. The Plan also provides for the catch-up contributions for individuals age 50 or over under sections 414(v) and 457(e)(18). However, the Plan provides that a participant can only utilize one of the two catch-up contribution provisions during a single year. The amounts that may be deferred under the annual maximum limitation and the catch-up provisions are within the limitations of section 457(c).

Under the Plan, a participant (upon severance of employment) or beneficiary may elect to have any portion of benefits deferred under the plan which constitute an eligible rollover distribution described in section 402(c)(4) of the Code paid directly to another eligible retirement plan described in section 402(c)(8)(B) such as an individual retirement account (IRA) in a direct rollover, with nonspouse beneficiaries subject to certain limitations set in section 402(c)(11).

With certain limitations, a participant or a beneficiary may elect the manner in which their deferred amounts will be distributed. The Plan provides that the manner and time of benefit payout must meet the distribution requirements of sections 401(a)(9) and 457(d) of the Code. The plan allows participants to take loans from their plan accounts, subject to certain restrictions. Loans made under the Plan are subject to rules in the Plan, section 72(p) of the Code and section 1.457-6(f)(2) of the Income Tax Regulations (the "regulations"), including provisions restricting the maximum amount and term of a plan loan.

The Plan provides that all amounts of compensation deferred under the Plan are to be held in trust (or a custodial account or annuity contract described in section 401(f)) for the exclusive benefit of the participants and their beneficiaries. The rights of any participant or beneficiary to payments pursuant to the Plan are generally non-assignable and not subject to transfer, assignment, or attachment.

Section 457 of the Code provides rules for the deferral of compensation by an individual participating in an eligible deferred compensation plan as defined in section 457(b). Section 457(b) provides that an eligible deferred compensation plan must be maintained by an eligible employer. Section 457(e)(1)(A) provides that an eligible employer

includes a state, political subdivision of a state, or any agency or instrumentality of a state or political subdivision of a state.

Section 457(a)(1)(A) of the Code provides that in the case of a participant in an eligible governmental deferred compensation plan, any amount of compensation deferred under the plan and any income attributable to the amounts so deferred shall be includible in gross income only for the taxable year in which such compensation or other income is paid to the participant or beneficiary. Section 457(b) provides that the term “eligible deferred compensation plan” means a plan established and maintained by an eligible employer in which only individuals who perform service for the employer may be participants and which meet the deferral limitations described in section 457(c); which meets the distribution requirements described in section 457(d); which provides for deferral elections described in section 457(b)(4); and, in the case of a governmental plan, which requires the plan assets and income to be held in trust for the exclusive benefit of participants and beneficiaries as described in section 457(g).

Section 457(b)(5) prescribes that an eligible deferred compensation plan must meet the distribution requirements of section 457(d). Under section 457(d)(1)(A), an eligible plan must provide that amounts will not be made available to participants or beneficiaries before i) the calendar year in which the participant attains age 70 1/2, ii) the participant has a severance from employment with the employer, or iii) when the participant is faced with an unforeseeable emergency as determined under the regulations.

Section 457(e)(16) provides that with respect to an eligible retirement plan established and maintained by a governmental employer, if 1) any portion of the balance to the credit of an employee in the plan is paid to him/her in an eligible rollover distribution, 2) the employee transfers any portion of the property received in such distribution to an eligible retirement plan described in section 402(c)(8)(B), and 3) in the case of a distribution of property other than money, the amount so transferred consists of the property distributed, then such distribution (to the extent so transferred) shall not be includible in gross income for the taxable year in which paid.

Section 457(g) provides that a plan maintained by an eligible governmental employer shall not be treated as an eligible deferred compensation plan unless all assets and rights purchased with such deferred compensation amounts and all income attributable to such amounts, property, or rights of the plan are held in trust for the exclusive benefit of participants and their beneficiaries. Section 457(g)(3) provides that custodial accounts and contracts described in section 401(f) shall be treated as trusts under rules similar to the rules under section 401(f) which means such accounts and contracts would be treated as organizations exempt from taxation under section 501(a).

Section 1.457-7(b)(3) provides that, in accordance with section 72(p), the amount of any loan from an eligible governmental plan to a participant or beneficiary is generally treated as having been received as a plan distribution under section 72(p)(1) except to

the extent set forth in section 72(p)(2) and § 1.72(p)-1 (relating to loans that do not exceed a maximum amount and that are repayable in accordance with certain terms).. Thus, except to the extent a loan from a governmental section 457(b) plan satisfies section 72(p)(2), § 1.72(p)-1 and § 1.457-6(f)(2), any amount loaned from an eligible governmental plan to a participant or beneficiary is includible in the gross income of the borrower for the taxable year when the loan is made. If a loan made under the Plan meets the requirements established under the Plan, the loan would satisfy the requirements of section 72(p)(2), § 1.72(p)-1 and § 1.457-6(f)(2), and thus would not be treated as a taxable distribution under section 72(p)(1) solely because the loan was made.

Based upon the provisions of the Plan summarized above and the documents presented, we conclude as follows:

1. The Plan constitutes an eligible deferred compensation plan as defined in section 457(b) of the Code as amended under EGTRRA and subsequent legislation, and the regulations thereunder.
2. Amounts of compensation deferred in accordance with the Plan, including any income attributable to the deferred compensation, will be includible under section 457(a)(1)(A) in the recipient's gross income for the taxable year or years in which amounts are paid to a participant or beneficiary pursuant to the provisions of the Plan.
3. Provided that loans from the Plan are made in accordance with the Plan's provisions, the making of such loans will not be treated as distributions subject to current taxation under section 72(p)(1).
4. Any payment made from the Plan in the form of an eligible rollover distribution (as defined in section 402(c)(4)), including a direct rollover, will not be includible in gross income in the year paid to the extent the payment is transferred to an eligible retirement plan (as defined in section 402(c)(8)(B)) within 60 days, including any property distributed from the Plan, in accordance with section 457(e)(16).

No opinion is expressed concerning the timing of the inclusion in income of amounts deferred under any deferred compensation plan other than the Plan of County C located in State S described above. If the Plan is significantly modified, this ruling may not necessarily remain applicable. This ruling is directed only to County C and the participants of the Plan and applies only to the Plan submitted on _____, including all subsequent amendments filed with this office as part of the ruling request, and approved by the Board.

This ruling is directed only to the Plan and not to any other section 457(b) plan. Section 6110(k)(3) of the Code provides that this ruling may not be used or cited as precedent.

Sincerely,

Cheryl Press
Senior Counsel, Qualified Plans Branch 2
(Employee Benefits)
(Tax Exempt & Government Entities)

Enclosure
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